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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91167991
Party	Plaintiff The H.D. Lee Company, Inc. The H.D. Lee Company, Inc. The H.D. Lee Company, Inc. 3411 Silverside Road201 Baynard Building Wilmington, DE 19810 UNITED STATES
Correspondence Address	Paul J. Kennedy Pepper Hamilton LLP Eighteenth and Arch Streets3000 Two Logan Square Philadelphia, PA 19103-2799 UNITED STATES kennedyp@pepperlaw.com, kearneyc@pepperlaw.com, mulligar@pepperlaw.com
Submission	Motion to Compel Discovery
Filer's Name	Cara M. Kearney
Filer's e-mail	kearneyc@pepperlaw.com, kennedyp@pepperlaw.com, mulliganr@pepperlaw.com
Signature	/cmk/
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Attachments	motion to compel ONE FABULOUS FIT.pdf (5 pages)(26977 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Serial No. 78/363,351)	
For the Mark: ONE FABULOUS FIT)	
)	
The H.D. Lee Company, Inc.,)	
Opposer)	
)	Opposition No. 91167991
v.)	
)	
Maidenform, Inc.,)	
Applicant.)	

**OPPOSER’S MOTION TO COMPEL RESPONSES
TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

Opposer H.D. Lee Company, Inc. (“Opposer”), by its undersigned counsel, respectfully submits this motion to compel Applicant Maidenform, Inc. (“Applicant”) to fully respond to Opposer’s requests for the production of documents and interrogatories.

I. INTRODUCTION

On July 24, 2006, Opposer served its Interrogatories and Requests for Production of Documents Addressed to Applicant – First Set upon Applicant (the “Requests”).

Soon thereafter, the parties began discussing potential resolutions to the matter, and Opposer granted Applicant numerous extensions of time to respond to the Requests. The most recent extension of time expired in November 2007.

Opposer did not file previously a motion to compel, because Opposer had a good faith belief that the parties had an understanding that the proceeding was in a *de facto* suspension from August 2006 through February 2007, and further extensions of time would be consented to by the parties because (1) the parties were actively negotiating settlement; (2) Opposer granted Applicant numerous extensions of time to respond to its Requests; (3) the parties consented to

extensions of the discovery period; and (4) Opposer generously agreed to consent to a reopening of the discovery period so that Applicant could serve its own discovery requests.

However, when Opposer contacted Applicant for an extension of the testimony period, Applicant denied Opposer's request under the pretense that the oppositions need to proceed. While Opposer agrees that such opposition must proceed, discovery responses are needed. Thus, without the anticipated consent extension, Applicant's immediate responses to Opposer's Requests are essential for Opposer to be able to submit its evidence during the testimony period. Applicant's refusal to produce the requested information in a timely fashion significantly prejudices Opposer's ability to introduce its full and complete testimony and evidence.

II. ARGUMENT

The Federal Rules of Civil Procedure provide that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Rule 26(b)(1), Fed. R. Civ. P. "The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence." Id. The Federal Rules allow broad and liberal discovery, and relevance is broadly construed.

TBMP § 403.03 provides that "[r]esponses to interrogatories, requests for production of documents and things, and requests for admission must be served within 30 days after the date of service of the request for discovery." Accordingly, Applicant's responses were due on August 23, 2006. In response to Applicant's extension requests, Opposer granted several extensions of time for Applicant to respond to the Requests. The last extension expired in November 2007.

Applicant has altogether failed to respond to Opposer's Requests. "A party which fails to respond to a request during the time allowed therefore, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery on the merits." TBMP § 403.03.

As is set forth above, Opposer did not file a motion to compel soon after Applicant's November 2006 Request due date, because Opposer had a good faith belief that the parties had an understanding that the proceeding was in a *de facto* suspension from August 2006 through February 2007, and further extensions of time would be consented to by the parties because (1) the parties were negotiating settlement; (2) Opposer granted Applicant numerous extensions of time to respond to its Requests; (3) the parties consented to extensions of the discovery period; and (4) Opposer generously agreed to consent to a reopening of the discovery period so that Applicant could serve its own discovery requests.

However, when Opposer contacted Applicant for an extension of the testimony period, Applicant denied Opposer's request. Through its refusal to extend the testimony period, Applicant illustrates that it could not have believed, in good faith, that the proceedings were *de facto* suspended. According to Applicant's understanding (that there was no *de facto* suspension), Applicant's responses are several months late. Applicant's immediate responses to Opposer's Requests are essential for Opposer to be able to submit its evidence during the testimony period.

Accordingly, Applicant's failure to respond to Opposer's Requests was not the result of any misunderstanding or "excusable neglect." Applicant has forfeited its rights to object on the merits to Opposer's discovery. See TBMP § 403.03. ("A party which fails to

respond to a request during the time allowed therefore, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery on the merits.”).

III. CONCLUSION

Accordingly, Opposer respectfully requests that Applicant be required to respond fully, immediately, and without objection to Opposer’s Requests.

Respectfully Submitted,



Paul J. Kennedy
Cara M. Kearney
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
Phone: (215) 981-4000
Fax: (215) 981-4750
Attorneys for Plaintiff

Dated: March 1, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
OPPOSER'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
PRODUCTION OF DOCUMENTS was deposited with the U.S. Mail to be sent first class
mail, postage prepaid, on this 1st day of March, 2007, upon the following:

Jennifer A. Prioleau, Esquire
Assistant General Counsel
Maidenform, Inc.
154 Avenue E
Bayonne, NJ 07002

A handwritten signature in black ink that reads "Cara Kearney". The signature is written in a cursive, flowing style.

CARA M. KEARNEY